THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.16250 OF 1997

Date: 22-12-2006

Between:

Balasa Jagan Mohan Rao Petitioner

And

Agent-cum-District Collector,

East Godavari District, Kakinada and three others.

Respondents

THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.16250 OF 1997

ORDER:

1. This writ petition has been instituted questioning the correctness of the orders passed by the Deputy Collector, Tribal Welfare, East Godavari, at Ramachodavaram in L.T.R.P. No.79 of 1995 dated 14th May, 1997.

2. The writ petitioner asserts his right and title over the land of an extent of Ac.1.32 cents situated in Survey No.95/2 of Rajavaram Village of Gangavaram Mandal, East Godavari District. The writ petitioner asserts that the land in question was originally purchased by his grand-father Sri Balasa Narasanna by a sale deed got executed in his favour in the year 1922. Even prior to this, it is alleged that the said Balasa Narasanna was in possession of the land under a possessory mortgage executed by the original owner in his favour. It is further alleged that the Special Deputy Tahasildar, Tribal Welfare, has initiated proceedings under Section 3 of the Andhra Pradesh (Scheduled Areas) Land Transfer Regulation Act, 1959 as amended by Act 1 of 1970 (hereinafter be referred to as 'the Act') and after conducting a thorough enquiry in to the matter has passed orders on 21.02.1983 dropping the proposed action of ejectment against the petitioner as there is no violation of the provisions of the aforementioned Act. But however, a petition was moved by a Tribal candidate alleging that one Vemula Surya Rao, said to be the son- in-law of Balasa Surya Rao, is in possession of the lands in question and is enjoying the same contrary to the provisions of Section 3 of the Act. Therefore, the Special Deputy Collector had entertained the same as L.T.R.P. 79 of 1995 and impleaded the said Vemula Surya Rao as the respondent. In spite of service of notice, the said Surya Rao has not participated in the enquiry and therefore, he has been set *exparte.* Thereafter, the enquiry was conducted by the Deputy Collector, Tribal Welfare, and he passed the orders on 14th May,1997 holding that the said Vemula Surya Rao being a non-tribal candidate could not have acquired the right and title over the schedule property in question, inasmuch as the said land is situated in Scheduled Area and therefore, held that the said Vemula Surya Rao has contravened the provisions contained in Section 3 of the Act. It is note worthy that powers have been conferred upon the Governor to make regulations for securing peace and good governance in Scheduled Areas, and in particular to prohibit or restrict the transfer of land by or among the members of the Scheduled Tribes in such area by the Constitution in it's 5th Schedule. Accordingly, Regulation 1 of 1959, which is called as Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959, has been framed. It has been brought in to force on 22-6-1959. In terms of Regulation 3, any transfer of immovable property situated in the agency tracts by a member of the Scheduled Tribe has been rendered null and void unless such a transfer has been made in favour of any other member of a Scheduled Tribe or a Registered Society comprising solely of members of the Scheduled Tribes.

3. The expression "transfer" has been defined in Clause (g) of Regulation 2 in the following terms:

“Transfer” means mortgage with or without possession, lease, sale, gift, exchange or any other dealing with immovable property, not being a testamentary disposition and includes a charge on such property or a contract relating to such property in respect of such mortgage, lease, sale, gift, exchange or other dealing.”

4. Therefore, the Deputy Collector, Tribal Welfare had found that the transfer of land between a tribal candidate and the respondent Vemula Surya Rao who is a non-tribal candidate is hit by the prohibition contained in Regulation 3 and accordingly he has ordered for ejectment of the said Vemula Surya Rao from the land in question.

5. In the counter affidavit, it is further asserted that the said Vemula Surya Rao has been ejected lawfully and the possession of the land in question was handed over to Chavalam Dharmannadora of Rajavaram village whose grand-father is said to be the original owner and possessor of the lands in question.

6. Be that as it may, Regulation 1 of 1959 has specifically provided for an appeal to the Agent to the Government against the decree and order passed by the Agency Divisional Officer. The writ petitioner has raised a dispute centering around the fact that the respondent who has been impleaded in the case namely Vemula Surya Rao who is alleged to be the son-in-law of Balasa Surya Rao has nothing to do with the land in question and therefore, he had remained *exparte*. Whereas it is the writ petitioner who is concerned with the land in question, who has not been impleaded as a party at all to the proceedings before the Agency Divisional officer and hence he was denied an opportunity to establish his right over the land. Apart from this, the writ petitioner is asserting that the land of an extent of Ac.1.32 cents forms part of schedule of the petition in question is the same which is owned by him. These factual aspects of the matter can be addressed and be dealt with more appropriately by an appellate authority rather than in a writ proceedings. I cannot enter in to the resolution of factual disputes in this matter, for, I do not have the necessary material or the details for doing so. It is only appropriate that the appellate authority should have been urged to deal with the same so that, actual finding of fact can be recorded in such proceedings. Since the writ petitioner has not availed the appeal provided for under Regulation 3 of Regulation 1 of 1959 and instead has been pursuing this writ petition, I consider it appropriate to provide him with a chance and opportunity to pursue the remedy of appeal. Therefore, time is granted up to 31st January,2007 for the writ petitioner to prefer an appeal before the Agent to the Government and if such an appeal is preferred by the writ petitioner by 31-01-2007, the same may be entertained and be dealt with on it’s merits. Since the counter affidavit has asserted that the land in question has been retrieved from the possession of Vemula Surya Rao and restored in favour of a Scheduled Tribe candidate even before the present writ petition came to be instituted, I direct the *status-quo* with regard to the possession of the land be maintained till such time the appeal is decided by the Agent of the Government.

7. With this, the writ petition stands disposed of. No order as to costs.

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NOOTY RAMAMOHANA RAO,J

22-12-2006

Stp